

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
3 SOUTHERN DIVISION
4

5
6 ALLEN DOUGLAS HALE, III,
7 Plaintiff,

8 VERSUS CIVIL ACTION NO: 1:16-cv-113-LG-RHW

9
10 CITY OF BILOXI, MISSISSIPPI;
11 KENNETH GARNER, Individually;
12 DARREN LEA, Individually; and
13 JOHN AND JANE DOES 2-10,
14 Individually,
15 Defendants.

16
17 30 (b) (6) DEPOSITION OF CITY OF BILOXI
18 DESIGNEE: JOHN B. MILLER

19 Taken at Biloxi Public Safety Building,
20 170 Porter Avenue, Biloxi, Mississippi,
21 on Wednesday, November 2, 2016, beginning
22 at 2:40 p.m.
23
24
25

1 Q. And would you want to tell them that
2 they're actually under arrest?

3 A. Sometime during the arrest, yes.

4 Q. Would you agree that's even more
5 important when you're at somebody's home?

6 A. Sure.

7 Q. And, you know, where it's italicized
8 there, where it says, under arrest so a reasonable
9 suspect will know, is that italicized for a
10 reason? Is that for emphasis?

11 A. Sure.

12 Q. And all of your officers are trained on
13 this particular policy?

14 A. Yes, they are.

15 Q. And if they were serving an arrest
16 warrant on Mr. Hale and did not advise him of a
17 warrant or that he was under arrest, would that be
18 a violation of that policy?

19 A. Well, it would depend. I mean, it
20 doesn't say if -- the first thing you have to do
21 during an arrest is, you have to gain control of
22 the situation itself. So it doesn't say that you
23 immediately tell them. It says that you advise
24 them that they're under arrest. And eventually,
25 without a doubt, that will take place, but the

1 first thing and key, number one thing is to get
2 control of the situation.

3 Q. Okay. But it does say to verbally
4 advise them that they're under arrest?

5 A. Sure.

6 Q. And in Paragraph 1 where it says, use
7 caution, planning, and establish techniques to
8 help reduce dangers to officers and suspects, in
9 planning, how exactly do you plan to serve an
10 arrest warrant to help reduce dangers?

11 A. Well, it would depend on the situation.
12 It would depend on the warrant. It would depend
13 on many, many, many things.

14 In this particular case, if I'm not
15 mistaken, they did plan. They stopped before they
16 got there. They looked at a photograph. They
17 took their own, individual cars. So there was
18 planning involved.

19 Q. Okay. And do you normally consider, you
20 know, the type of offense that the warrant is
21 being served for? Does that go into your --

22 A. Yeah, you would always consider that,
23 but you certainly would never allow yourself to
24 believe -- for instance, if you're going to arrest
25 someone on a simple misdemeanor warrant or

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2 control of the situation.

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4 advise them that they're under arrest?

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20 know, the type of offense that the warrant is
21 being served for? Does that go into your --

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23 but you certainly would never allow yourself to
24 believe -- for instance, if you're going to arrest
25 someone on a simple misdemeanor warrant or

1 difference between active and passive resistance?

2 A. Sure.

3 Q. Can you kind of tell me what the
4 difference between active and passive resistance
5 is?

6 A. Sure. Passive resistance would be if
7 someone is resisting you but they're not becoming
8 animated or angry, if you will; and then
9 naturally, if it's aggressive, then it would step
10 up the level.

11 Q. Okay. So if somebody's somewhat
12 confused or argumentative or just verbally, you
13 know, saying things, that's more passive
14 resistance?

15 A. It is more passive. Again, that would
16 never be something that you would let your guard
17 down. People are passive resistant about
18 something many times when they're trying to bide
19 time in order to give them time to decide what
20 their next move is going to be.

21 Q. And active-resistance behavior, would
22 that be fighting?

23 A. It could be, yes.

24 Q. Struggling or trying to run type of
25 thing?

1 something, you would never allow yourself to
2 believe that there's anything that's standard or
3 there's -- your senses should be lessened because
4 of the type of offense.

5 Q. Are there any exceptions to Paragraph 3
6 where they don't have to verbally advise them that
7 they're under arrest?

8 A. No. I mean, you would always tell them
9 eventually. At some time or another, you'd have
10 to advise them that they're under arrest.

11 Again, you would want to gain control of
12 the situation first. I mean, the arrest -- the
13 actual arrest procedure isn't just the beginning
14 of the arrest. There's a long procedure there
15 that takes place.

16 Q. And I understand that's leading to the
17 actual physical arrest. To gain control, would
18 you agree that, you know, telling them they're
19 under arrest is a good way to do that?

20 A. Sure. I'm not going to disagree that's
21 a good way to do it. You know, you have to take
22 other things into consideration, too, I mean,
23 whether a person knows that they're under arrest
24 or they should know that they're under arrest.

25 Q. And do you train your officers on the

1 A. Yes.

2 Q. So some type of physical manifestation
3 of, you know, a physical threat or, you know,
4 fighting, that type of thing?

5 A. Sure.

6 Q. Are your officers, are they trained that
7 you're ever allowed to use deadly force when
8 there's just passive resistance?

9 A. That wouldn't be something that you
10 would train.

11 Q. That you would train?

12 A. No, you wouldn't train to use deadly
13 force. You use deadly force when you believe
14 deadly force is necessary, when you feel like
15 yourself or someone else is in imminent danger.

16 Q. When did y'all -- when I say "y'all,"
17 I'm obviously referring to the department -- begin
18 issuing tasers to your officers?

19 A. Oh, now you're asking me something that
20 I don't remember the date. It's been quite a few
21 years.

22 Q. Five years or so?

23 A. Yeah.

24 Q. What type of training is required before
25 a sworn officer is allowed to carry his taser out

1 stuff?

2 A. There's some of both done. A lot of
3 classroom. There is some role playing
4 occasionally done.

5 Q. And is all of that done in-house, as
6 well?

7 A. Much of it, yes. Keep in mind, we do
8 still send officers away to different schools, and
9 a lot of times they'll get some training there,
10 also.

11 Q. If certain officers are found in
12 violation of these policies, do you send them to
13 additional training?

14 A. Depends on what the violation is. You
15 can't write a policy to cover every incident.
16 Just like not saying "taser, taser, taser," even
17 though we train that, that's not something that I
18 would discipline somebody over, simply for not
19 saying "taser, taser, taser." If they tell
20 someone, I'm about to tase you, it's there. What
21 they're trying to infer to them is there.

22 So you can't write a policy to cover
23 every individual instance, so we have to structure
24 our policies so that we're -- really the policy is
25 more for the officer, to give him a direction to

1 go and make him understand, or try to understand,
2 that this is what we expect out of this.

3 Q. I understand. And so what you're saying
4 is, you know, under no circumstances would you
5 discipline an officer for not saying "taser,
6 taser, taser"?

7 A. Yeah, more than likely not.

8 MR. HOLDER: Can we take a quick break?

9 MR. ROS: Sure.

10 - - -

11 (Off the record.)

12 BY MR. HOLDER:

13 Q. All right, Chief Miller. I'm going to
14 direct you to Interrogatory Number 13 and the
15 City's Responses to the First Set of
16 Interrogatories Propounded by the Plaintiff that
17 is on Page 7.

18 MR. ROS: Sorry. You're reading my
19 copy, which has my notes on it.

20 BY MR. HOLDER:

21 Q. If you would, please, ignore his notes,
22 that would be great.

23 In response to any reprimands for
24 Sergeant Garner, about halfway down -- a little
25 more than halfway down, there is a -- and I'll